

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether (“MTBE”)

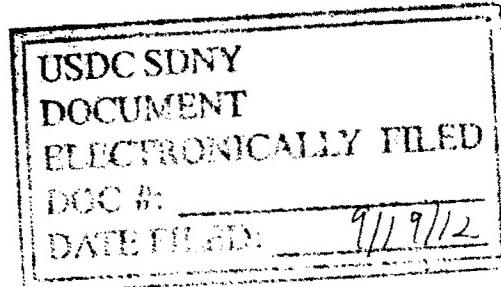
Master File No. 1:00 – 1898

Products Liability Litigation

MDL 1358 (SAS): M21-88

This document relates to:

*New Jersey Department of Environmental Protection v.
Atlantic Richfield Co., et al., No. 08 Civ. 00312*



SHIRA A. SCHEINDLIN, U.S.D.J.:

[Signature]
[PROPOSED] CASE MANAGEMENT ORDER 106
(EXPERT DISCOVERY PROTOCOL)

With respect to testifying experts in this litigation:

- I. The parties shall produce the required expert reliance materials (hereinafter, the “Reliance Materials”) no later than five business days after the deadline to serve each relevant expert report pursuant to Case Management Order No. 101 (“CMO-101”). The Reliance Materials to be produced shall include all files, documents, texts and underlying data or manipulations of such data reviewed or relied upon by that expert in forming the basis for his or her opinion, including all computer software programs, models, computer simulations on which the expert’s opinions are based, and work papers. Any additional reliance materials generated or first reviewed and relied upon by the expert subsequent to the initial production of reliance materials but prior to the deposition shall be produced promptly and no later than 48 hours before the commencement of the deposition. Reliance materials that are publicly available and have been cited in full by the expert need not be produced absent a specific request.

II. With respect to experts who rely on computer-based modeling, the following illustrate the nature or content of the modeling-related Reliance Materials to be produced:

- A. All electronic executable copies and operating instructions for modeling programs and pre- and post-processor programs that are not public domain models and cannot reasonably be purchased by the requesting party. In all cases, the requesting party shall be responsible for obtaining any necessary licenses.
- B. All reference documents or calculations supporting selection of input parameter values or ranges.
- C. A tabular summary of input data specifying the range of values considered and the ultimate value(s) selected for purposes of calibration, sensitivity analysis, parameter optimization, validation and scenario/hypothesis testing.
- D. A modeling journal (log of model runs) regarding construction, calibration, sensitivity analysis, parameter optimization, validation and scenario/hypothesis testing.
- E. Electronic copies of all modeling files.
- F. Quantification of accuracy (alternatively, uncertainty analysis) regarding model output (groundwater flow and contaminant transport models).
- G. All electronic database files generated in support of the modeling analysis.
- H. ~~All analytical model analyses conducted apart from the numerical model analysis for purposes of parameter selection, parameter optimization, model calibration, hypothesis testing, etc.~~

The parties acknowledge that they are ~~obligated to preserve all modeling journals and modeling files (subparts D and E, above) pending the Court's ruling on the motion discussed at the August 16, 2012 status conference, and that the Court's ruling on that motion may affect the scope of the materials that ultimately need to be produced pursuant to subparts D and E, above.~~

III. The deadlines set forth in Section I, above, will not govern the production of demonstrative exhibits to be used at trial as a summary of or support for the opinions to be expressed by an expert. Such demonstrative exhibits shall be produced three business days prior to the day when that expert will testify at trial, or such other time as the Court may order.

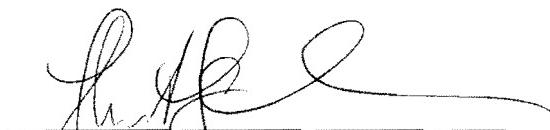
IV. For any witness who may offer any expert opinion testimony but is not required to provide a written report as per FRCP 26(a)(2)(C), the party sponsoring such witness shall disclose (i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and (ii) a summary of the facts and opinions to which the witness is expected to testify. Such disclosures shall be made no later than 30 days

after the deadlines set forth in CMO-101 for service of reports from the corresponding experts (e.g., plaintiff/defendant, non-site-specific/site-specific, affirmative/rebuttal reports) who are required to provide a written report. The parties shall produce Reliance Materials reviewed by witnesses whose expert opinion disclosures are made pursuant to this paragraph no later than five business days after the subject matter and summary of such witness's testimony is disclosed, as set forth in this paragraph. This Section in no way limits or expands the scope of available discovery of such witnesses in their capacity as percipient witnesses.

V. Nothing in this Protocol may be used by any party to establish the relevance or lack of relevance of any materials or information referenced herein.

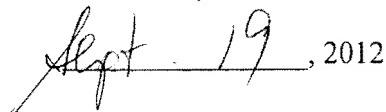
VI. The parties shall meet and confer subsequent to the date of plaintiffs' expert disclosures for the purpose of addressing and formulating a plan for the scheduling, duration, location and other details regarding the proposed depositions of the plaintiffs' designated experts. The parties shall also conduct a comparable meet-and-confer with respect to depositions of defendants' designated experts subsequent to defendants' expert disclosures.

SO ORDERED.



Hon. Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York



Sept. 19, 2012

-Appearances-

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